1992

Salt Lake City Corporation v. Ronald Scott Leahy : Brief of Appellee

Utah Court of Appeals

Ronald Scott Leahy; Appellant.
Larry V. Spendlove; Assistant City Attorney; Attorney for Appellee.

DOCKET NO. 920382CA ~~IN THE~~ UTAH COURT OF APPEALS

SALT LAKE CITY CORPORATION, Plaintiff/Appellee vs. RONALD SCOTT LEAHY, Defendant/Appellant.	)	Case No. 920382-CA **Priority No. 15**

BRIEF OF APPELLEE SALT LAKE CITY

Appeal from Judgment of the Third Circuit Court
of Salt Lake County, Salt Lake Department
Honorable Sheila K. McCleve

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JURISDICTION AND NATURE OF CASE

This is an appeal from the Judgment of the Honorable Sheila K. McCleve, Third Circuit Court in and for Salt Lake County, Utah, Salt Lake Department, against Appellant Leahy for the principal sum of $7. That judgment was the result of a trial de novo following an appeal by defendant/appellant from a Judgment against him in the Small Claims Department of the Third Circuit Court.

Appellant has claimed jurisdiction of this Court under Rules 3 and 4 of the Utah Rules of the Utah Rules of Appellate Procedure and the Utah Constitution. Appellee challenges the jurisdiction of this Court under Article VIII, Section 2, and Article VIII, Section 5, Constitution of Utah, and Sections 78-2-2(2),(3), 78-2a-3(2), 78-4-7.5 and 78-6-10(2) Utah Code Annotated, 1953 as amended.

STATEMENT OF ISSUES

1. Does the Utah Court of Appeals have jurisdiction to hear appellant Leahy's appeal in this instance?

2. Does Section 78-6-10(2) Utah Code Annotated 1953 violate any constitutional right of Appellant?

3. Are Sections 12.56.530 and 12.56.560, Salt Lake City Code, valid and constitutional enactments of a municipal entity within the State of Utah?

4. Does this Court have jurisdiction to review the sufficiency of evidence for the Judgment below, and, if so, was sufficient evidence presented at the trial de novo in the Circuit Court to sustain the $7 judgment?

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS

UNITED STATES CONSTITUTION

Amendment XIV, Section 1:

Section 1. [Citizenship -- Due process of law -- Equal protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UTAH CONSTITUTION

Article I, Section 7:

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

Article I, Section 11:

Sec. 11. [Courts open -- Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Article VIII, Section 2:

Sec. 2. [Supreme court -- Chief justice -- Declaring law unconstitutional -- Justice unable to participate.]

The Supreme Court shall be the highest court and shall consist of at least five justices. . . . The court shall not declare any law unconstitutional under this constitution or the Constitution of the United States, except on the concurrence of a majority of all justices of the Supreme Court. . . .

Article VIII, Section 5:

Sec. 5 [Jurisdiction of district court and other courts -- Right of appeal.]

The district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs. The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both original and appellate, shall be provided by statute. Except for matters filed originally with the Supreme Court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause.

UTAH CODE ANNOTATED, 1953, AS AMENDED

Section 78-2-2(2), (3)(j):

Section 78-2-2. Supreme Court jurisdiction

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

* * *

(j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction.

Section 78-2a-3(2)(d):

Section 78-2a-3. Court of Appeals jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

* * *

(d) appeals from the circuit courts, except those from the small claims department of a circuit court;

Section 78-4-7.5:

Section 78-4-7.5. Trials de novo.

The circuit court has appellate jurisdiction to hear trials de novo of the judgments of the justices' courts and trials de novo of the small claims department of the circuit court.

Section 78-6-1(1)(a), (7):

78-6-1. Creation -- Jurisdiction -- Biannual review -- Counsel not necessary -- Deferring multiple claims of one plaintiff -- Supreme Court to govern procedures.

(1) The circuit court shall and, if certified by the Judicial Council, the justice court may create a department known as the "Small Claims Department" which has jurisdiction in cases:

(a) for the recovery of money where the amount claimed does not exceed $2,000 including attorney fees but exclusive of court costs and interest and where the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained; . . .

* * *

(7) Small claims shall be managed in accordance with specified rules of procedure and evidence promulgated by the Supreme Court.

Section 78-6-10 (1), (2), (3) (prior to 1988 amendment):

Section 78-6-10 Conclusiveness of judgment -- Jurisdiction for appeals.

(1) The judgment of the small claims department of the justices' and circuit court is conclusive upon the plaintiff unless a counterclaim has been interposed.

(2) If the matter is heard in the small claims department of the circuit court, the defendant may appeal the judgment of the circuit court to the Court of Appeals by filing a notice of appeal within five days of the entry of the judgment against him.

(3) If the matter is heard in the small claims department of the justices' court, the defendant may obtain a trial de novo in the circuit court by filing in the circuit court of the county a petition for trial de novo within five days of the entry of the judgment against him.

Section 78-6-10(1), (2) (following 1988 amendment):

Section 78-6-10. Appeals -- Who may take and jurisdiction.

(1) Either party may appeal the judgment of the small claims department of the circuit or justices' court to the circuit court of the county by filing a notice of appeal within ten days of the notice of entry of the judgment.

(2) The appeal to the circuit court is a trial de novo and shall be tried in accordance with the procedures of

the small claims department, except a record of the trial shall be maintained. The trial de novo may not be heard by a small claims court judge pro tempore appointed under Section 78-6-1.5. The decision of the trial de novo may not be appealed unless the court holds a state statute or local ordinance unconstitutional.

UTAH RULES OF APPELLATE PROCEDURE

Rule 3(a):

Rule 3. Appeal as of right: how taken.

(a) Filing appeal from final orders and judgments. An appeal may be taken from a district, juvenile, or circuit court to the appellate court with jurisdiction over the appeal from all final orders and judgments, except as otherwise provided by law, by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. . . .

UTAH RULES OF CRIMINAL PROCEDURE

Rule 26(13)(a):

Rule 26. Appeals.

(13) An appeal may be taken to the circuit court from a judgment rendered in the justice court under this rule, except:

(a) the case shall be tried anew in the circuit court. The decision of the circuit court is final, except when the validity or constitutionality of a statute or ordinance is raised in the justice court;

SALT LAKE CITY CODE

Section 12.56.150 B, C:

12.56.150 Parking meters -- Installation.

B. No person shall park any vehicle in any parking meter space, except as otherwise permitted by this

chapter, without immediately depositing in the parking meter contiguous to the space such lawful coin or coins of the United States as are required for such meter and designated by directions on the meter, and when required by the direction on the meter, setting in operation the timing mechanism thereof in accordance with said directions, unless the parking meter indicates at the time such vehicle is parked that an unexpired portion remains of the period for which a coin or coins has been previously deposited.

C. No person, except as otherwise provided by this chapter, shall permit any vehicle parked by such person to remain parked in any parking meter space during any time when the parking meter contiguous to such space indicates that no portion remains of the period for which the last previous coin or coins has been deposited, or beyond the time limited for parking as designated on the meter.

Section 12.56.530:

12.56.530 Parking violation -- Owner's responsibility.

Whenever any vehicle shall have been parked in violation of any of the provisions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be prima facie responsible for such violation and subject to the penalty therefor.

Section 12.56.560:

12.56.560 Unauthorized use of streets -- Strict liability of owner.

Whenever any vehicle shall have been employed in the unauthorized use of streets, the person in whose name such vehicle is registered shall be strictly liable for such unauthorized use and the penalty therefor.

RELEVANT FACTS

1. On or about October 27, 1990 an automobile registered to Appellant Leahy was parked on the streets of Salt Lake City at a location where there was a parking meter. Due to expiration of

the time on the meter, a Salt Lake City official placed a civil parking notice on the vehicle. (Trial transcript ["Tr"], pages 4 and 6)

2. As a result of Appellant Leahy's failure to respond to said parking notice and to several additional notices mailed to the address indicated on his motor vehicle registration, (the same address as shown on Appellant's Notice of Appeal), Appellee Salt Lake City filed a Small Claims Affidavit in the Third Circuit Court of Utah, Salt Lake Department on March 10, 1991 for a civil penalty of $47. The Small Claims Affidavit and Order were served upon Appellant Leahy on January 11, 1992. (Tr, p. 7; Record ["R"], documents 3 and 4)

3. The said Affidavit stated that the subject vehicle had been parked in violation of Section 12.56.150, Salt Lake City Code, that at the time of said violation the vehicle was registered to Appellant Leahy, and that Leahy was liable to the City for being the owner of said vehicle in violation, as provided by Section 12.56.530 of the City's ordinances. (R, doc. 3)

4. A trial was held in the Small Claims Court on February 26, 1992, at which Appellant Leahy was present. Plaintiff Salt Lake City presented evidence that the subject vehicle had been parked in violation of the City's parking ordinances and that the registered owner of the vehicle was Defendant Leahy as of the date of the violation. (Brief of Appellant, p. 6)

5. Defendant Leahy challenged the constitutionality of Salt

Lake City ordinances 12.56.150 and 12.56.530. The Small Claims Court upheld the constitutionality of the said ordinances and rendered judgment against Defendant Leahy for the principal sum of $47 plus $26 court costs and $45 attorney's fees, for a total judgment of $118. (Brief of Appellant, pp. 6, 9)

6. Defendant Leahy appealed the Small Claims Court judgment to the Third Circuit Court, and a trial de novo was held on April 22, 1992 before the Honorable Sheila K. McCleve. Plaintiff Salt Lake City again presented evidence of the violation of the subject vehicle and of Defendant Leahy's being the registered owner of said vehicle at the time of violation. (Tr, pp. 5, 6)

7. Defendant Leahy chose not to present any evidence whatsoever, including any evidence that the subject vehicle had not been over-parked or that he was not the registered owner of that vehicle at the time of violation. (Tr, at pp. 20, 21)

8. Once again Defendant Leahy challenged the constitutionality of the aforementioned ordinances and the sufficiency of the evidence against him. He did not challenge Section 78-6-10, Utah Code Annotated, 1953 before the Circuit Court. (Tr, pp. 22-24)

9. Salt Lake City argued that Section 12.56.560, Salt Lake City Code, imposed strict liability upon Defendant Leahy and that a prima facie case had been made against him under Section 12.56.530, Salt Lake City Code. (Tr, pp. 21-23)

10. The Circuit Court found Salt Lake City Ordinances 12.56.130 and 12.56.530 to be constitutional and entered judgment

against Defendant Leahy for the principal sum of $7 plus costs. (Tr, pp. 25-27)

SUMMARY OF ARGUMENT

1. The Utah Court of Appeals lacks jurisdiction to hear Appellant Leahy's appeal. Utah Code Annotated Section 78-6-10 provides that the decision of the Circuit Court in a trial de novo following an appeal from the Small Claims Court may not be appealed unless the Circuit Court holds a State statute or local ordinance unconstitutional. In this instance the lower court found no State statute or local ordinance unconstitutional.

2. The state statute and municipal ordinances challenged by Appellant are entitled under the law to a presumption of validity and constitutionality. The burden of proof is on Appellant to prove beyond a reasonable doubt their invalidity.

3. Appellant did not challenge Section 78-6-10 in either of the courts below and is precluded from raising said challenge for the first time on appeal to this Court. Utah Code Annotated Section 78-6-10 does not deprive Appellant of his due process rights nor his right to seek redress through the Court under the Utah Constitution. Just as not all matters are appealable to the Supreme Court, not all matters are appealable to the Court of Appeals. The purposes of the abbreviated procedures with respect to the Small Claims Court is to relieve the workload upon the Supreme Court and the Court of Appeals and to allow those

appellate courts to concentrate on areas of complexity.

4. Salt Lake City ordinances 12.56.530 and 12.56.560 were adopted pursuant to power granted by the Utah Legislature. The trial court's judgment against Appellant is presumed correct and Appellant carries the burden of overcoming this presumption.

5. Salt Lake City Ordinance 12.56.530 is a legislative recognition of a common-law inference drawn from proven facts. It is a civil parking ordinance, identical to the Chicago, Illinois ordinance which was upheld by the Illinois Supreme Court and approved by several other states. It does not violate Appellant's due process rights, but simply shifts the burden to the Defendant to go forward with proof. Under the rationale of the Illinois court it imposes strict and vicarious liability on the owner of an illegally parked vehicle.

6. Salt Lake City Ordinance 12.56.560 expressly imposes strict liability upon the registered owner of an automobile which is parked in violation of the City's ordinances. Strict liability ordinances have long been recognized in the law, particularly in regulatory measures where the *mala prohibitum* emphasis of the ordinance is upon the achievement of some social betterment rather than the punishment of crimes, as in cases of offenses *mala in se*. Such strict liability is recognized under Utah statutory law (Section 76-2-102 Utah Code Annotated 1953 as amended) and Utah decisional law.

7. This Court has no jurisdiction to review the sufficiency of evidence of the Circuit Court's judgment, which acted as an

appellate court from the Small Claims Court. However, the trial transcript establishes that there was sufficient evidence presented at the trial de novo to sustain the judgment of the Circuit Court.

ARGUMENT

POINT I

THE COURT OF APPEALS LACKS JURISDICTION IN THIS MATTER.

A. APPELLANT FAILED TO GIVE NOTICE TO ATTORNEY GENERAL.

Appellant has challenged the validity of a State statute herein: Section 78-6-10, Utah Code Annotated, 1953, as amended. However, Appellant has failed to serve a copy of this proceeding upon the Utah Attorney General. Section 78-33-1, Utah Code Annotated, 1953, requires that

> . . . if a statute or state franchise or permit is alleged to be invalid the Attorney General shall be served with a copy of the proceeding and be entitled to be heard.

See Hemenway & Moser v. Funk, 106 P.2d 779 (Utah 1940). This required notice is a condition precedent to Appellant going forward in the instant appeal, and this Court lacks jurisdiction to consider this matter in the absence of proof of such notification having been given.

B. THIS COURT SHOULD NOT CONSIDER APPELLANT'S CHALLENGE TO STATE STATUTE SECTION 78-6-10 SINCE THIS CHALLENGE IS RAISED FOR THE FIRST TIME ON APPEAL HERE.

Defendant/Appellant Leahy does not allege, and there is no

record or transcript to show, that he challenged the validity or constitutionality of Section 78-6-10, Utah Code Annotated, 1953, as amended, before the Small Claims Court. (Brief of Appellant, p. 6.) Neither does Leahy allege, nor does the transcript of the de novo trial show, any challenge to the said State statute before the Circuit Court of appeal from the Small Claims Court. (Tr., pp. 22-24.) Defendant/Appellant is precluded from raising a challenge to a statute which is raised for the first time before this Court of Appeals. City of Monticello v. Christensen, 788 P.2d 513 (Utah 1990); State v. Matus, 789 P.2d 304 (Utah App. 1990).

C. UNDER THE UTAH CONSTITUTION, THE COURT OF APPEALS HAS ONLY THAT APPELLATE AUTHORITY GRANTED IT BY STATE STATUTE. THERE IS NO STATUTE WHICH GRANTS THIS COURT JURISDICTION TO HEAR DEFENDANT/APPELLANT'S APPEAL HEREIN.

It is Appellee Salt Lake City's contention that the Utah Court of Appeals lacks jurisdiction to hear the appeal in this instance. This Court was created by State statute and has only such jurisdiction as is granted by statute. Article VIII of the Utah Constitution provides for a Supreme Court (Article VIII Section 3), a District Court (Article VIII Section 5), and states that:

> The jurisdiction of all other courts, both original and appellate, shall be provided by statute except for matters filed originally with the Supreme Court, there shall be in all cases an appeal of right from the court or original jurisdiction to a court with appellate jurisdiction over the cause. Article VIII Section 5.

(Emphasis added.)

In a matter filed in the Small Claims Court, that Court is

the Court of original jurisdiction, and the initial trial is conducted before that Court:

> 78-6-1. Creation -- Jurisdiction -- Biannual review -- Counsel not necessary -- Deferring multiple claims of one plaintiff -- Supreme Court to govern procedures.
>
> (1) The circuit court shall and, if certified by the Judicial Council, the justice court may create a department known as the "Small Claims Department" which has jurisdiction in cases:
>
> > (a) for the recovery of money where the amount claimed does not exceed $2,000 including attorney fees but exclusive of court costs and interest and where the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained; . . .
> >
> > * * *
>
> (7) Small claims shall be managed in accordance with simplified rules of procedure and evidence promulgated by the Supreme Court.

Section 76-6-1 Utah Code Annotated 1953 as amended.

An appeal from the judgment of the Small Claims Court is to the Circuit Court of the County in which the Small Claims Department is located. Rather than simply being an appeal on matters of law and sufficiency of evidence for the judgment below, the appellant from the Small Claims Court is entitled to a trial de novo to present the same, or additional facts, as those presented below, and to present the same or additional legal arguments and to challenge the constitutionality of ordinances and statutes. Section 78-6-10, Utah Code Annotated 1953 provides that:

> (1) Either party may appeal the judgment of the small claims department of the circuit or justices' court to the circuit court of the county by filing a notice of appeal within ten days of the notice of entry of the judgment.
>
> (2) The appeal to the circuit court is a trial de novo and shall be tried in accordance with the procedures of the small claims department, except a record of the trial shall be maintained. The trial de novo may not be heard by a small claims court judge pro tempore appointed under Section 78-6-1.5. The decision of the trial de novo may not be appealed unless the court holds a state statute or local ordinance unconstitutional.

As is provided in the aforementioned Section 78-6-10, the decision of the trial de novo may not be appealed unless the Court holds a State statute or local ordinance unconstitutional. By statute, the Circuit Court acts as an appellate court for all appeals from the Small Claims Department and is the court of last resort provided by statute unless an ordinance or statute is found unconstitutional.

> The circuit court has appellate jurisdiction to hear trials de novo of the judgments of the justices' courts and trials de novo of the small claims department of the circuit court.

Section 78-4-7.5. See City of Monticello v. Christensen, 788 P.2d 513 (Utah 1990) and State v. Matus, 789 P.2d 304 (Utah App. 1990).

Appeals from final civil judgments of the Circuit Courts are to the Court of Appeals (Section 78-4-11). The jurisdiction of the Court of Appeals is set forth at Section 78-2a-3, Utah Code Annotated 1953 as amended, which provides, *inter alia*:

> (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

* * *

> (d) appeals from the circuit courts, except those from the small claims department of a circuit court;

(Emphasis added.)

There is no provision in the State statutes for the Court of Appeals to hear a challenge to the constitutionality of a State statute or a municipal ordinance where the challenge was raised, or could have been raised, in the Small Claims Court, and again in the Circuit Court acting as an appellate court, where no statute or ordinance has been declared unconstitutional. For these reasons, the Court of Appeals lacks jurisdiction to hear this case, and the appeal should be dismissed.

POINT II

> STATE STATUTES AND MUNICIPAL ORDINANCES ARE ENTITLED TO A PRESUMPTION OF VALIDITY AND CONSTITUTIONALITY. EVERY REASONABLE CONSTRUCTION WILL BE UTILIZED TO RENDER A LEGISLATIVE ENACTMENT AND ITS CLASSIFICATIONS VALID. THE BURDEN OF PROOF IS ON THE CHALLENGER TO PROVE BEYOND A REASONABLE DOUBT THE INVALIDITY OF THE ORDINANCE OR STATUTE.

Appellant Leahy has challenged the constitutionality of a State statute, Section 78-6-10, Utah Code Annotated 1953, for the first time on this appeal. He also challenged two Salt Lake City Ordinances, Sections 12.56.530 and 12.56.560, Salt Lake City Code.

State statutes, as well as municipal ordinances, are presumptively valid. Courts will indulge in every reasonable construction to render the legislative act valid and

constitutional. Professor McQuillin, in his respected treatise on municipal corporation, has stated:

> No ordinance or law will be declared unconstitutional unless clearly so, and every reasonable [effort] will be made to sustain it. Not only must unconstitutionality appear clear, but, it has been asserted, it must appear and be proved beyond a reasonable doubt . . . If the constitutional questions raised are fairly debateable, the court must declare the ordinance constitutional, as the court cannot and must not substitute its judgment for that of the local legislative body.

5 McQuillin, Municipal Corporations, §19.06 at pp. 377-78 (3rd Ed.Rev.); see also, Id. §19.14.

The Utah Supreme Court has addressed the issue as follows:

> It is well settled in this state, as elsewhere, that the courts will not declare a statute unconstitutional unless it clearly and manifestly violates some provision of the constitution of the United States. Every presumption must be indulged in favor of the constitutionality of an act, and every reasonable doubt resolved in favor of its validity. (Citations omitted) The whole burden lies on him who denies the constitutionality of a legislative enactment.

State v. Packer, 297 P. 1013, 1016 (Utah, 1931). See also, State v. Packard, 250 P.2d 561 (Utah, 1952). (Emphasis added.)

This rule of construction has been emphasized more recently by the Court, which held:

> It [a city ordinance] should not be held to be invalid unless it is shown beyond a reasonable doubt to be incompatible with some particular constitutional provision.

Salt Lake City v. Savage, 541 P.2d 1035, 1037 (Utah, 1975), cert. den. 425 U.S. 915, 47 L.Ed.2d 766 (authorities omitted, emphasis added). See also, City of Monticello v. Christensen, 788 P.2d 513 (Utah 1990).

POINT III.

SECTION 78-6-10, UTAH CODE ANNOTATED, 1953, VIOLATES NO LEGALLY PROTECTED RIGHT OF APPELLANT UNDER THE UTAH CONSTITUTION.

A. THE STATUTE DOES NOT VIOLATE EQUAL PROTECTION RIGHTS.

Appellant claims that since the plaintiff may choose the Small Claims Court as the forum in which to commence legal action (where the amount in controversy is within the Small Claims Court's jurisdiction), and that since the only appeal from a decision of a trial de novo in the Circuit Court is where the Court holds a State statute or local ordinance unconstitutional, Section 78-6-10 Utah Code Annotated 1953 unconstitutionally deprives defendants in small claims actions of seeking redress protected under the Utah Constitution, Article I, Section 11, and deprives defendants of due process of law under Utah Constitution, Article I, Section 7.

Appellant, despite his burden of proving the statute unconstitutional in the face of a presumption of validity, cites only one case in support of his proposition: Liedtke v. Schettler, 649 P.2d 80 (Utah 1982). However, that case is inapposite for a number of reasons. First, it did not address either the issue of open access to the courts under Article I, Section 11 or due process of law under Article I, Section 7. Rather it addressed the issue of whether former Section 78-6-10 Utah Code Annotated 1953 was in violation of Article I, Section 24, Utah Constitution that all laws of a general nature shall

have uniform operation.

At the time of the Liedtke decision, (prior to the 1988 amendment), Section 78-6-10 provided that plaintiffs may appeal to the District Court only from Small Claims Court judgments granted on a counterclaim, if such was asserted by defendants. The judgment on plaintiffs' own Complaints were conclusive upon them. Defendants were afforded an appeal from any judgment. The Court held that that statute did not violate the constitutional requirement that all laws of a general nature have uniform operation.

Although Appellant Leahy has not challenged the current Section 78-6-10 (as amended in 1988) under Utah Constitution Article I, Section 24, generally considered the equivalent of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, it would certainly withstand such a challenge. As stated in the Liedtke case,

> The small claims courts were established as separate departments of justice of the peace courts and circuit courts in this state for the purpose of providing speedy adjudication of money claims not exceeding $400 [since increased to $2,000]. Sections 78-6-1, *et seq.*, provide expedited procedure, reduced filing fees, and informal presentation of evidence and witnesses in small claims courts, so that the fees for an attorney may be avoided.

Liedtke v. Schettler, 649 P.2d 80, 81 (Utah 1982).

The Court then went on to state that:

> Statutes which treat classes of citizens differently do not offend equal protection guarantees unless the classification and different treatment bear no rational relationship to the objective of the legislation.

The Court found that the differing rights of appeal between

plaintiffs and defendants, established by the statute, bore a rational relationship to the objective of the legislation - the speedy adjudication of small claims:

> Under §78-6-11, an appeal by plaintiff from an adverse judgment on his own complaint would afford plaintiff a trial de novo -- thus two choices of forum -- and would entirely defeat the objective of speedy adjudication of small claims. We do not find it to be unreasonable, nor a denial of equal protection, for the legislature to deny plaintiff two such bites of the apple.

Liedtke, supra at 82.

The limitation complained of by the plaintiff in the Liedtke case has been eliminated by current statutes which allow an appeal by either the plaintiff or defendant from any Small Claims Court judgment for a trial de novo in the Circuit Court. Appellant Leahy, however, contends that the present statute which limits appeals from the Circuit Court to the Court of Appeals to appeals from judgments finding a statute or ordinance unconstitutional benefits the plaintiff to the detriment of the defendant since

> [i]t is difficult to imagine a case in which a challenge to the constitutionality of a statute or ordinance would be asserted, in a small claims matter, except as a defense to a claim.

Brief of Appellant p. 8.

In fact, a plaintiff in a small claims action has as much right as a defendant to challenge the constitutionality of a statute or ordinance in attempting to obtain redress in matters within the jurisdiction of the Small Claims Court. Whichever litigant challenges the constitutionality of the statute or ordinance has its first bite at the apple in the small claims

proceeding. If the statute or ordinance is upheld by the Small Claims Court, that same litigant has a second bite at the apple before the Circuit Court. Neither the plaintiff nor the defendant is treated differently, so there is not even an issue of equal protection of the laws.

However, even if it is the case that the defendant is more likely to challenge the constitutionality of a statute or ordinance than a plaintiff, the defendant still has two bites at the apple, either (1) in the Small Claims Court and in the Circuit Court if the matter is initially filed in the Small Claims Court, or (2) in the Circuit Court and the Court of Appeals if the matter is originally filed in the Circuit Court.[1] The plaintiff's two bites at the apple come in his appeal to the Circuit Court and his appeal to the Court of Appeals.

Applying the rationale of the Liedtke case, this statute's treatment of classes of citizens differently does not offend equal protection guarantees since the classification and different treatment bear a rational relationship to the objective of the legislation, which is speedy adjudication of relatively minor monetary claims, providing expedited procedure, reducing filing fees, and allowing for informal presentation of evidence and witnesses, so that fees for an attorney may be avoided.

There are numerous examples under Utah law of different

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[1]The Court of Appeals has appellate jurisdiction from all appeals from the Circuit Courts, except those from the Small Claims Department of the Circuit Court. Section 78-2a-3(2)(d), Utah Code Annotated, 1953, as amended.

treatment of classes of citizens in the Courts. These include limitations on appeals to the Supreme Court where appeals are provided by statute to other appellate courts. The purposes of these limitations include relieving the Supreme Court of an excessive workload and allowing it to concentrate on particular areas of complexity and greater moment. This different treatment of classes of citizens likewise does not offend equal protection guarantees since the classification and different treatment bear a rational relationship to the objective of the legislation.

In addition, a defendant objecting to a finding of constitutionality of a statute or ordinance by a trial de novo in the Circuit Court may petition the Supreme Court for a writ of certiorari. Further, if this Court of Appeals has authority, which Appellee denies, to hear the instant matter, this present appeal is an example of a right of appeal which Defendant Leahy has, despite the supposed limitations imposed by Section 78-6-10.[2]

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[2]In an earlier case, the Utah Supreme Court held Section 78-6-10 U.C.A. 1953, in its earlier form, to be constitutional against an equal protection challenge, saying:

> The Small Claims Court is totally a creature of statute. Given its nature and purpose it is not unreasonable for the legislature to provide a different time for taking an appeal from the Small Claims Court, from that provided for appeals from other courts. Defendant as an appellant from a Small Claims Court has been given a reasonable time within which to take an appeal. He finds himself within a reasonable classification.

Larson Ford Sales, Inc. v. Silver, 551 P.2d 233 (Utah 1976).

B. THE STATUTE DOES NOT VIOLATE APPELLANT'S CONSTITUTIONAL RIGHT TO OPEN ACCESS TO THE COURTS.

Appellant Leahy has utterly failed to meet his burden of showing, beyond a reasonable doubt, that Section 78-6-10 is violative of the open courts provision of the Utah Constitution Article I, Section 11, since he has cited no cases or other authority for his position.

An extensive discussion by the Utah Supreme Court of the meaning, history, and applicability of Utah Constitution Article I, Section 11, and its relationship to other constitutional sections, was set forth in the case of Berry v. Beech, 717 P.2d 670 (Utah 1985). The Court stated that a plain reading of Section 11 establishes that the framers of the Constitution intended that an individual could not be arbitrarily deprived of effective remedies designed to protect basic individual rights. Berry, supra at 675. In analyzing the relationship between Section 11 and other constitutional provisions the Court stated:

> The meaning of Section 11 must be taken not only from its history and plain language, but also from its functional relationship to other constitutional provisions. Section 11 and the Due Process Clause of Article I, Section 7 are related both in their historical origins and to some extent in their constitutional functions, to a degree, the two provisions are complementary and even overlap, but they are not wholly duplicative.

Berry, supra at 675. The Court then went on to analyze the open courts provision:

> Specifically, neither the due process nor the open courts provision constitutionalizes the common-law or otherwise freezes the law governing private rights and remedies as of the time of statehood. . . . Once a cause of action under a particular rule of law accrues

> to a person by virtue of an injury to his rights, that person's interest in the cause of action and the law which is the basis for a legal action becomes vested, and a legislative repeal of the law cannot constitutionally divest the injured person of the right to litigate the cause of action to a judgment. . . .
>
> On the other hand, Section 11 rights are not always paramount, either. They do not sweep all other constitutional rights and prerogatives before them. They, too, like many constitutional rights, must be weighed against and harmonized with other constitutional provisions. The accommodation of competing, and sometimes clashing, constitutional rights and prerogatives is a task of the greatest delicacy, although a common and necessary one in constitutional adjudication. For example, the right to protection of a person's reputation must be accommodated to the right of others to speak freely.

Berry, supra, at pp. 676, 677. (Footnotes deleted.)

The Berry Court announced a two part test in determining whether Section 11 rights and the prerogative of the legislature are properly accommodated:

> First, Section 11 is satisfied if the law provides an injured person an effective and reasonable alternative remedy "by due course of law" for vindication of his constitutional interest. The benefit provided by the substitute must be substantially equal in value or other benefit to the remedy abrogated in providing essentially comparable substantive protection to one's person, property or reputation, although the form of the substitute remedy may be different. . . .
>
> Second, if there is no substitute or alternative remedy provided, abrogation of the remedy or cause of action may be justified only if there is a clear social or economic evil to be eliminated and the elimination of an existing legal remedy is not an arbitrary or unreasonable means for achieving the objective.

Berry, supra, at p. 680.

Section 78-6-10, Utah Code Annotated, 1953, prior to its 1988 amendment, provided for an appeal mechanism whereby the judgment of the Small Claims Department of the Circuit Court was

conclusive upon the plaintiff unless a counterclaim had been interposed. A defendant could appeal the judgment of the Small Claims Court to the Court of Appeals by filing a notice of appeal within five days of the entry of judgment against him. The 1988 amendments to Section 78-6-10 modified the rights of appeal to the Circuit Court by providing for a trial de novo by either party and extended the time for filing a notice of appeal to ten days after the notice of entry of judgment. The provision for an appeal from the Circuit Court to the Court of Appeals where a State statute or local ordinance was found unconstitutional was a new right added by the legislature which was not found in the statute prior to the 1988 amendment.

Applying the analysis of the Berry Court, the Section 11 open courts provision was satisfied by the 1988 amendments because the new law provided an injured person with an effective and reasonable alternative remedy "by due course of law," for vindication of his constitutional interests which was "substantially equal in value or other benefit to the remedy abrogated in providing essentially comparable substantive protection to one's person, property, or reputation, although the form of the substitute remedy may be different." Berry, supra, at p. 680.

C. THE STATUTE DOES NOT VIOLATE APPELLANT'S DUE PROCESS RIGHTS.

Again, appellant's challenge of the subject statute on due process grounds must fail since he has failed to meet his burden,

beyond a reasonable doubt, of showing the unconstitutionality of the statute under Utah Constitution Article I, Section 7.

With respect to that constitutional section, the Utah Supreme Court has explained the due process guarantee as follows:

> [N]either a court nor other judicial tribunal may deny a person a constitutional right or deprive such person of a vested interest in property without any opportunity to be heard. To do so constitutes taking of property without due process of law.
>
> Many attempts have been made to further define "due process" but they all resolve into the thought that a party shall have his day in court -- that is each party shall have the right to a hearing before a competent court, with the privilege of being heard and introducing evidence to establish his cause or his defense, after which comes judgment upon the record thus made.

Christiansen v. Harris, 163 P.2d 314, 316 (1945) cited in Celebrity Club, Inc. v. Utah Liquor Control Commission, 657 P.2d 1293, 1296 (1982).

The due process rights provided to Appellant Leahy under Section 78-6-10 include the right to a trial in the Small Claims Court, with the privilege confronting and cross-examining witnesses, being heard and introducing evidence to establish his defense, together with all other privileges appertaining to that proceeding. He has the right to appeal that judgment to the Circuit Court and to have a trial de novo, again with all the privileges appertaining thereto, and he has the right to appeal to the Court of Appeals from judgment finding a State statute or local ordinance to be unconstitutional. In a very real sense, it may be said that he has had his "day in court" twice. The fact that he may not further appeal if a State statute or local

ordinance is not found unconstitutional in no way deprives him of his day in court and in no way deprives him of his due process rights under the Utah Constitution.

POINT IV.

THE SUBJECT MUNICIPAL ORDINANCES WERE VALIDLY ADOPTED PURSUANT TO POWER GRANTED BY THE UTAH LEGISLATURE.

In 1952, the Utah Supreme Court held that the City of Ogden did not have either the express or implied power to make the registration of an illegally parked vehicle prima facie evidence that the owner committed or authorized the violation. City of Ogden v. Nasfell, 349 P.2d 507 (Utah 1952). However, this holding was based upon the Dillon Rule, that is, "any fair, reasonable, substantial doubt concerning the existence of the power is resolved by the courts against the corporation (city) and the power denied . . ." 249 P.2d at 508, citing 1 Dillon Municipal Corp., 5th Ed., p. 448, §237.

The Utah Supreme court strongly repudiated the Dillon Rule in State v. Hutchinson, 624 P.2d 1116 (1980). In Hutchinson, the court upheld a county ordinance based on Section 17-5-77 U.C.A. (1953), which granted counties the authority to enact all necessary measures to promote the general health, safety, morals, and welfare of their citizens. The Court found that the Legislature had made a similar grant of power to the cities, citing Section 10-8-84, U.C.A., (1953):

> They may pass all ordinances and rules, and make all regulations, not repugnant to law, necessary for

> carrying into effect or discharging all powers and duties confirmed by this chapter, such as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort and convenience of the city and the inhabitants thereof, and for the protection of property therein . . .

(Emphasis added.)

Whether that authority extended to the enactment of a strict liability ordinance was answered by Salt Lake City v. Ronnenburg, 674 P.2d 128 (Utah 1983), where an ordinance imposing strict criminal liability upon a tavern owner for permitting an underage person to come upon tavern premises was upheld.

In upholding the county ordinance based on the general welfare provision, the court in Hutchinson utilized a parallel analysis to City ordinances. See, e.g., 624 P.2d at 1122, wherein the Court noted that "charter cities have been endowed with even more wide ranging powers. . . .," and the "grant of general welfare power to counties is duplicated by a similar grant to the cities, and this Court has on several occasions squarely sustained City ordinances solely on the basis of the general welfare clause." Citations omitted. In abrogating the Dillon Rule, the Court further explained that "[b]road construction of the powers of counties and cities is consistent with the current needs of local governments." 624 P.2d at 1126.

In addition to the general welfare grant, the state has also made specific grants of power which "should generally be construed with reasonable latitude in light of the broad language of the general welfare clause which may supplement the power

found in a specific delegation." Hutchinson, supra, at 1126. Section 41-6-17(a)(1) U.C.A. (1953) grants local authorities the power to regulate or prohibit stopping, standing, or parking. Section 10-8-11 allows cities to "regulate the use of streets, alleys, avenues, sidewalks, crosswalks, parks, and public grounds. . . ."

Further expanding the cities' power to enact ordinances is Section 10-3-702, which provides:

> [A municipality] may pass any ordinance to regulate, require, prohibit, govern, control or supervise any activity, business, conduct or condition authorized by this act or any other provision of law. . . . [The municipality] may prescribe a minimum penalty for the violation of any municipal ordinance and may impose a civil penalty for the unauthorized use of a municipal property, including but not limited to, the use of parks, streets, and other public grounds or equipment. Rules of civil procedure shall be substantially followed.

The fact that Salt Lake City ordinances 5.56.530 and 5.56.560 are civil ordinance, imposing civil penalties, is a further argument in the City's favor. Whereas the ordinance in Nasfell was a criminal ordinance the standard of proof of which was "beyond a reasonable doubt," under Salt Lake City's parking program the maximum penalty for over-parking is $47 (Trial transcript, at page 8), and the standard of proof is a "preponderance of evidence." Nasfell is not controlling both because it has been judicially repudiated and because it is inapposite.

It is clear that pursuant to Hutchinson and state enabling statutes, the City has the power to adopt the above ordinances.

POINT V.

THE TRIAL COURT'S JUDGMENT AGAINST APPELLANT IS PRESUMED CORRECT AND APPELLANT CARRIES THE BURDEN OF OVERCOMING THIS PRESUMPTION.

Two classes of presumptions apply in this action. The first are legal presumptions. When a criminal defendant is given a fair opportunity to present his case, all presumptions favor the validity of the trial court judgment. State v. Seymour, 417 P.2d 655 (Utah, 1966).

The trial court rendered a civil judgment against appellant. That judgment is likewise presumed valid. The effect of such presumption is to place the burden of showing error or prejudice on the appellant who seeks to upset the trial court judgment. State v. Hamilton, 419 P.2d 770 (Utah, 1966).

Thus, on appeal, all legal presumptions support the trial court judgment. Appellee will demonstrate, further, that the factual presumption which the trial court applied is in all respects constitutionally supportive of the judgment against appellant.

POINT VI.

A COMMON LAW PARKING PRESUMPTION EXISTS, INDEPENDENT OF ENABLING STATUTES OR LOCAL ORDINANCES. IT IS NOT A PRESUMPTION OF LAW, BUT IS AN INFERENCE DRAWN FROM PROVEN FACTS. AS SUCH, IT HAS BEEN ACCEPTED BY THE COURTS OF THIS COUNTRY FOR NEARLY HALF A CENTURY.

Section 12.56.530, Salt Lake City Code, provides for prima facie responsibility of a person in whose name a vehicle is registered whenever such vehicle is parked in violation of the provisions of any ordinance prohibiting or restricting parking.

Unlike the presumptions of law applicable on appeal (discussed under Point V), the factual presumption established by Section 12.56.530 and applied by the trial court is not a presumption in a precise sense. It is merely an inference drawn from facts established by proof in the case:

> Presumptions are generally grouped into two major classes -- presumptions of law and presumptions of fact. These are sometimes referred to, respectively as legal and natural presumptions. Presumptions of fact are, in their nature, inferences.

29 Am.Jur.2d 160.

Factual presumptions are therefore merely inferences drawn from proven facts. Their basis is experience and reason:

> A presumption of fact -- which is the same as, or akin to, an inference -- is a logical and reasonable conclusion of the existence of a fact in a case, not presented by direct evidence as to the existence of the fact itself, but inferred from the establishment of other facts from which, by the process of logic and reason, based upon human experience, the existence of the assumed fact may be concluded by the trier of the fact. A presumption of fact, or inference, is nothing more than a probable or natural explanation of facts, is at best a mere argument, and does not estop a party from proving his case by competent evidence. A presumption of this kind arises from the commonly accepted experiences of mankind and the inferences which reasonable men would draw from experiences. In those instances where one fact is proved or ascertained and another fact is its uniform concomitant, such other fact is presumed or inferred, without other proof, because of the uniform experience concerning the connection between the two facts. Evidence of the inherent capacity and strong tendency of something to cause an event is ordinarily evidence that the event did so result therefrom.

29 Am.Jur.2d, 161.

Needless to say, it is the prerogative of the trier of fact -- here the trial judge -- to determine whether to apply a

presumption or inference of fact. On appeal, such inferences are presumed to be reasonable and are construed in a light most favorable to the State. State v. Erickson, 568 P.2d 751 (1977).

For nearly half a century, there has existed a widely accepted judicial presumption to the effect that evidence of ownership and illegal parking is sufficient to support an inference that the owner parked the car. This presumption has repeatedly been held sufficient to sustain a conviction if the inference is not explained or refuted by other evidence.[3]

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[3]The following reported cases evidence early acceptance of this historic judicial presumption:

1934	New York	People v. Marchetti, 276 N.Y.S. 708
1938	Kentucky	Commonwealth v. Kroger, 122 S.W.2d 1006, 1009
1940	New York	People v. Rubin, 31 N.E.2d 501
1943	Illinois	City of Chicago v. Crane, 49 N.E.2d 802, 804 (quoted with approval from Kroger, supra.)
1946	Rhode Island	State v. Morgan, 48 A.2d 248, 249 (Affirming conviction by an evenly divided court)
1947	Pennsylvania	Commonwealth v. Smith, 60 Pa. D&C 520
1949	Missouri	City of St. Louis v. Cook, 221 S.W.2d 468, 470 (Common law presumption recognized but decided on other grounds)
1955	New York	People v. Hildebrandt, 126 N.E.2d 377, 49 A.L.R.2d 499
1960	New York	People v. Avis Rent-A-Car Div., Cent. Taxicab Co., 206 N.Y.S.2d 400
1962	New York	People v. Johnson, 228 N.Y.S.2d 527

This common law presumption has been developed through the courts; accordingly, it exists independent of enabling statutes or local ordinances.

With one erroneous exception,[4] no court under reported case law has ever refused to recognize this common law presumption. Occasionally courts question the power of local governments to adopt the presumption by ordinance. But because the presumption exists by virtue of the common law, the existence or non-existence of local ordinance has had no legal effect on application of the presumption by the courts.

Thirty years ago the Utah Supreme Court denied Ogden City authority to adopt an ordinance creating the prima facie parking presumption. Nasfell v. Ogden, 122 Utah 344, 249 P.2d 507 (1952). It relied upon the Dillon rule of strict statutory construction to question Ogden's enabling authority. The Court's majority opinion did not address the existence of the longstanding judicial presumption. However, its existence was specifically noted in Justice Crockett's dissenting opinion.

For at least three decades since the Nasfell decision, Salt Lake City Courts (and their successor Circuit Courts) have continued to accept this common law rule of evidence and have

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[4]Only one case has ever refused to recognize this presumption. State v. Scoggin, 72 S.E.2d 54 (1952). The opinion was written under the misimpression that courts had refused to accept the presumption. The court's superficial research into the case law recognizing the judicial presumption was criticized in two strong dissents, citing the numerous cases overlooked in the majority opinion. The Court later upheld the validity of a legislative presumption to the same effect. State v. Rumfelt, 85 S.E.2d 398 (1955).

utilized registered ownership as evidence to prima facie identify drivers of illegally parked vehicles.

In the case here under appeal, the trial judge applied the ownership inference consistent with all applicable case law as well as with the City's ordinance which is a legislative recognition of that common law inference. The trial court is entitled to take judicial notice of common-law presumptions as well as codified presumptions (Rule 301, Utah Rules of Evidence).

POINT VII.

NEITHER THE COMMON LAW PARKING PRESUMPTION NOR THE PRESUMPTION CODIFIED IN APPELLEE'S PARKING ORDINANCE IS VIOLATIVE OF APPELLANT'S DUE PROCESS RIGHTS.

Rarely, if ever, has a presumption as to parking liability similar to the one in question been ruled to violate constitutional due process.[5]

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[5]The following jurisdictions have upheld such presumptions (either judicial or legislatively enacted) when attacked on due process grounds:

Illinois	Supreme Court	1978	Chicago v. Hertz Commercial Leasing Corp., 375 N.E.2d 1285, cert. denied, 439 U.S. 929, 99 S.Ct. 315, 58 L.Ed. 322
Iowa	Supreme Court	1976	Iowa City v. Nolan, 239 N.W.2d 102
Texas	Court of Criminal Appeals	1975	Snell v. State, 518 S.W.2d 383
Oregon	Court of Appeals	1974	City of Portland v. Kirk, 518 P.2d 665

The prevailing caselaw all upholds the constitutionality of parking presumptions. They are directly in point. They are not contradicted in reported case law. Such is undoubtedly the reason Appellant cited no authorities whatsoever in his appeal brief in this case.

The numerous cases upholding the constitutionality of the parking presumption are thoroughly buttressed by the latest U.S. Supreme Court decisions. Through a recent series of cases, the Supreme Court has defined the due process standard against which

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Oklahoma	Court of Criminal Appeals	1969	Cantrell v. Oklahoma City, 454 P.2d 676
Missouri	Court of Appeals		Kansas City v. Howe, 416 S.W.2d 683
Texas	Court of Criminal Appeals	1964	Stecher v. State, 383 S.W.2d 594
Ohio	Supreme Court	1960	City of Columbus, Ohio v. Webster, 164 N.E.2d 734
Arkansas	Supreme Court	1957	Red Top Driv-Ur-Self v. Potts, 300 S.W.2d 261.
New York	County Court	1951	People v. Lang, 106 N.Y.S.2d 829; see also People v. Rubin, supra' People v. Hildebrandt, supra; People v. Avis Rent-A-Car Div., Cent. Taxicab Co., supra; People v. Johnson, supra
Missouri	Supreme Court	1949	City of St. Louis v. Cook, 221 S.W.2d 468
California	Superior Court	1940	People v. Bigman, 100 P.2d 370
Michigan	Supreme Court	1938	People v. Kayne, 282 N.W. 248
Massachusetts	Supreme Court	1934	Commonwealth v. Ober, 189 N.E. 601

presumptions are to be tested in criminal cases. Barnes v. United States, 412 U.S. 837, 37 L.Ed.2d 380, 93 S.Ct. 2357, (1973); Turner v. United States, 396 U.S. 398, 24 L.Ed.2d 610, 90 S.Ct. 642 (1970); Leary v. United States, 395 U.S. 6, 23 L.Ed.2d 57, 89 S.Ct. 1532 (1969); United States v. Romano, 382 U.S. 136, 15 L.Ed.2d 210, 86 S.Ct. 279 (1965); United States v. Gainey, 380 U.S. 63, 13 L.Ed.2d 658, 85 S.Ct. 754 (1965); Tot v. United States, 319 U.S. 463, 87 L.Ed. 1519, 635 S.Ct. 1241 (1943).

In Leary v. United States, supra, the Court summarized the constitutionality test as follows:

> The upshot of Tot, Gainey and Romano is, we think, that a criminal statutory presumption must be regarded as "irrational" or "arbitrary" and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend.

Thus, the Leary Court concluded that an inference meets due process standards if it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend. This more-likely-than-not standard has been adhered to in the subsequent cases of Turner and Barnes.

In the Turner case, supra, the Court upheld a conviction for possession of illegally imported heroin. The defendant in that case was not shown to have had any knowledge whatsoever of the drug being illegally imported. The Court took notice of the fact that heroin is generally imported illegally into this country and upheld the inference that the defendant knew these drugs had been

illegally imported.

In the more recent case of Barnes v. United States, supra, the Court considered the constitutionality of instructing the jury that it may infer from defendant's unexplained possession of recently stolen mail, that he possessed the mail with knowledge that it was stolen. The Court held the inference also to be valid.

Thus, in recent cases, due process requirements were met by showing a "more-likely-than-not" connection between the proven facts and the inferred fact. The Court did not fully define the constitutional test for inferences in criminal cases. It appears, however, to regard the "reasonable doubt" test as substantially equivalent to the due process standard. The Court in Barnes states:

> To the extent that the "rational connection", "more likely than not," and "reasonable doubt" standards bear ambiguous relationships to one another, the ambiguity is traceable in large part to variations in language and focus rather than to differences of substance.

Id. p. 843.

In Barnes, two factors persuaded the Court that both the due process and reasonable doubt standards had met: first, that the inference was rooted in the common-law; and second, the probability of a relationship based upon "experience" and "common sense". Id. at p. 845.

The factors which persuaded the U.S. Supreme Court in Barnes are present in the instant case. The impressive historical acceptance of the traditional common-law presumption here in

question is detailed under Point III. The roots of that inference are half-a-century deep. In referencing the significance of such common-law acceptance, Barnes Court stated:

> This longstanding and consistent judicial approval of the [jury] instruction, reflecting accumulated common experience, provides strong indication that the instruction comports with due process.

Id. at p. 844.

Recent court decisions invalidating irrebuttable presumptions are not applicable here, since all presumptions referred to herein are fully rebuttable.

Of course, the challenged parking inference is more than rooted in our accumulated case law experience. It is based upon both experience and good sense. In the present case, the challenged presumption only permitted the inference of responsibility from unexplained evidence of ownership and illegal parking. Defendant/Appellant Leahy failed to present any evidence whatsoever in rebuttal. (Trial transcript, pages 20, 21) On the basis of this evidence alone, common sense and experience tell us of a high probability that respondent was the driver of the vehicle. In the absence of some contrary explanation, such evidence was clearly sufficient to enable the trial court to find by a preponderance of evidence that petitioner was the vehicle driver.

There is, of course, evidence of the high correlation between vehicle ownership and operation. The Supreme Court of Michigan found by survey taken on random dates, that in 87.6% of the cases where automobiles were parked in violation of the

ordinance, the owner of such automobile had, himself, committed the violation. In 8% of the cases, such violation had been committed by immediate members of the owner's family, and in 4.4% of such cases, the violation was committed by some other person. People v. Kayne, supra, at p. 249.

The closeness of this relationship between the registered owner of an automobile and its operation is emphasized by the Court in People v. Bigman, supra:

> Relationship between the registered owner of an automobile and its operation is natural; if he is not the operator on any occasion that fact is directly within his knowledge and in the ordinary course of events can easily be proved with such certainty as almost entirely to exclude the possibility of a false conviction. The presumption we are dealing with is not a presumption which either creates a crime or establishes the fact that a crime has been committed. On the contrary it arises only after proof by competent evidence that an offense, including all essential elements thereof, has been committed by some person and that such offense has been committed by and through the use of an instrumentality which defendants has caused to be registered in the public records of the state in his name and which by virtue of such registration he is primarily, of all persons in the state, entitled to use.

The closeness of this relationship, together with the need of the presumption for effective traffic enforcement, lead the Chief Justice of the Utah Supreme Court to support the constitutionality of the presumption here in question. Chief Justice Wolfe, in a concurring opinion in Nasfell v. Ogden City, supra, stated:

> I opine that an ordinance passed under State granted power which provides that a judicial tribunal having jurisdiction may find an owner or a person registered as owner of an automobile guilty of the charge of excess or illegal parking in a proscribed area when it

> appears from the evidence that the car of such registered owner has been found to have been overparked or parked in a proscribed area and such owner, after reasonable notice of the fact of such excess or proscribed parking, fails to bring forth satisfactory proof that he is not the owner, or if the owner, that such car was not overparked or was not parked in a proscribed area by him or at his direction is constitutional.
>
> While such procedure places upon an owner the obligation to free himself from a law imposed presumption of guilty arising from the fact that he appears in the records as the registered owner, I think, in the interests of traffic regulation, such presumption may be indulged without running afoul of constitutional objections respecting failure to accord due process.

Thus, it appears universally, that the inference here in question satisfies the most stringent standards courts have applied in judging permissible criminal law inferences. These requirements are satisfied because the defendant is not precluded from rebutting any element of the substantive offense.

If the standards are met in judging criminal law inferences, they certainly are met in judging civil law inferences such as are present in the instant case.

POINT VIII

SALT LAKE CITY'S CIVIL PARKING ORDINANCE, SECTION 12.56.530, PATTERNED AFTER A CHICAGO ORDINANCE, VALIDLY IMPOSES STRICT AND VICARIOUS LIABILITY UPON THE OWNER OF AN ILLEGALLY PARKED VEHICLE, REGARDLESS OF WHO PARKED IT.

Salt Lake City's current civil parking ordinance, Section 12.56.530, was enacted in 1986, several years after Hutchinson was decided. It was patterned after, and is identical to, a

Chicago ordinance which was upheld by the Illinois Supreme Court. City of Chicago v. Hertz Commercial Leasing Corp., (1978), 71 Ill. 2d 333, 17 Ill. Dec. 1, 375 N.E. 2d 1285, *cert. denied*, 439 U.S. 929, 99 S.Ct. 315, 58 L.Ed. 2d 322. In Hertz, the Court ruled that the ordinance imposes vicarious liability on a registered owner of a vehicle parking in violation with the result that proof that the vehicle was in possession of another at the time of violation is irrelevant to the substantive offense. The Court stated:

> The defendants vigorously argue that the plain meaning of the words "prima facie responsible" in the Chicago ordinance indicates that it was the municipality's clear intention to allow the registered owner to rebut the presumption that the vehicle was parked by the owner. The issue cannot be so facilely resolved. The words "prima facie" mean nothing more than "at first sight" or "so far as can be judged from the first disclosure" or "without more" . . . In its statutory context the words "prima facie" mean that the City has established its case against the registered owner by proving (1) the existence of an illegally parked vehicle, and (2) registration of that vehicle in the name of the defendant. Such proof constitutes a prima facie case against the defendant owner. There is no indication in the ordinance that the owner, to be presumed responsible for the violation, must be presumed to have been the person who parked the vehicle. In practice, the defendant, to absolve himself of responsibility, may show that the vehicle was not parked illegally or that he was not the registered owner of the vehicle at the time of the alleged violation. The defenses are limited, but the plain meaning of the ordinance admits of no more.
>
> . . . This unambiguous language imposes both strict and vicarious liability on the owner whenever his vehicle is illegally parked, irrespective of whether the owner was the person who parked the vehicle.

Hertz, supra. at page 1288 (emphasis added) (citations deleted).

The Court, in Hertz, made note of cases from three other

jurisdictions which had interpreted the words "prima facie responsible" in accord with the Hertz Court's interpretation. See City of Columbus,Ohio v. Webster, 170 Ohio St. 327, 328, 164 N.E. 2d 734, 735 (Ohio 1960); Kansas City v. Hertz Corp., 499 S.W. 2d 449, 452-453 (Mo. 1973); and Iowa City v. Nolan, 239 N.W. 2d 102, 103 (Iowa 1976). See also 60 ALR 4th 784, 872.

The Hertz Court likewise upheld the ordinance against challenges, *inter alia*, that (1) it imposed an irrebuttable presumption in contravention of constitutional due process protections (the defendant is not precluded form rebutting either element of the substantive offense), and (2) that it denied defendants equal protection under the law.

Therefore, under the Hertz rationale, Salt Lake City's ordinance 12.56.530 validly and constitutionally imposes strict and vicarious liability upon the owner of an illegally parked vehicle, regardless of who may have parked it.

POINT IX.

SALT LAKE CITY'S STRICT LIABILITY PARKING ORDINANCE DOES NOT DENY APPELLANT DUE PROCESS. SECTION 12.56.560 DOES NOT DENY APPELLANT DUE PROCESS.

Appellant argues that Salt Lake City's Section 12.56.560, which holds a person in whose name a vehicle is registered which had been employed in the unauthorized use of Salt Lake City streets as strictly liable for such unauthorized use, is violative of his due process rights.

Strict liability statutes and ordinances have long been

recognized in the law, particularly in regulatory measures, where the *mala prohibitum* emphasis of the law is upon the achievement of some social betterment rather than punishment of crimes, as in cases of *mala in se*. See Morissette v. United States of America, 342 US 246, 96 L ed 288, 72 S Ct 240 (1952).

One legal scholar has cited and classified a large number of cases applying the doctrine of "crimes without intent," and concludes that they fall roughly into subdivisions of:

> (1) illegal sales of intoxicating liquor, (2) sales of impure or adulterated food or drugs, (3) sales of misbranded articles, (4) violations of antinarcotic Acts, (5) criminal nuisances, (6) violations of traffic regulations, (7) violations of motor-vehicle laws, and (8) violations of general police regulation, passed for the safety, health or well-being of the community.

(Emphasis added.) Sayre, Public Welfare Offenses, 33 Col L Rev 55, 73, 84; referred to in Morissette, supra, footnote 20, at 96 L ed 288, 300.

As was noted in Point IV above, the Utah Supreme Court has upheld the authority of a municipality to enact an ordinance imposing strict criminal liability upon a tavern owner for permitting an underage person to come upon the tavern premises, even in the absence of proof of criminal intent. Ronnenburg, supra.

With regard to the claim of a violation of due process, Appellee has addressed this issue under Point VIII above. The same rationale which was applied in the Hertz case is applicable here. That is, that since the defendant is not precluded from rebutting either element of the substantive offense (that he is

the owner of the vehicle or that the vehicle was not illegally parker), the constitutional requirement of procedural due process is satisfied. Hertz, supra, at page 1291.

POINT X.

PUBLIC POLICY SUPPORTS THE APPLICATION OF THE COMMON LAW PARKING INFERENCE AND THE ORDINANCES CHALLENGED BY APPELLANT.

Parking enforcement is one of the lease glamorous but most critical of municipal functions. Its objectives are founded in public safety and welfare and in common courtesy. There are within every community persons who despise such laws and hold them as a butt of their humor. They repeatedly flout the interests of their fellow citizens by parking within crowded downtown traffic lanes, on high-speed expressways, across private driveways, near school crosswalks, or in emergency zones or handicapped parking areas. One need only read an occasional police accident report to realize the hazard and inconvenience posed to citizens by these drivers.

Law enforcement is often the only means by which thoughtless and often anonymous parking violators are reminded of their obligations to others. Salt Lake City, of course, does not suggest that the violations by Defendant/Appellant in this particular action are as critical to public safety and welfare as certain other parking laws. But Defendant/Appellant's challenge to the historic parking presumption, and to the subject parking

ordinances, jeopardizes our entire parking enforcement program. As stated by the Court in People v. Bigman, 100 P.2d 370, 373:

> The great convenience to the state through operation of this presumption in the proof of identity of operators in cases of illegal parking on the thousands of miles of highways in the state or to the officers of a municipality in enforcing the laws within the more limited but still relatively extensive public streets therein, is readily apparent. It is a matter of common knowledge, of which we may take notice, that is would be, and has in fact been, impractical for a city the size of that wherein this prosecution arose (Los Angeles; and we do not doubt that the same is relatively true in municipalities throughout the state) to maintain a police force large enough to personally detect any substantial portion of vehicular parking law violators by observing them in the act of illegal parking or by discovering the illegally parked vehicle and awaiting the return of the absent operators. The extent of the convenience to the state, it seems apparent to us, will far outweigh such inconvenience as may be occasioned to some registered owners whose automobiles when used by others may be illegally parked and result in the owners having to appear and answer the charges. In such instances, however, except in the comparatively rare cases of stolen or unlawfully moved cars, the owners can protect themselves by permitting their automobiles to be used only by persons who will be responsible to them for any unlawful parking of the vehicles. In any event, the inconvenience is basically caused not by the operation of the presumption of identity of the operator but rather by the violation by the actual operator of the substantive law involved. In no way whatsoever does the operation of the presumption preclude the owner from his right to challenge the fact as to who did operate the vehicle.

To strike down the parking presumption as unconstitutional may do more than destroy the foundation of the parking enforcement program of every major city within the court's jurisdiction. Should courts begin to require new and burdensome tests for factual presumptions, vast areas of law enforcement generally may be critically affected. (The theft and drug cases considered by the U.S. Supreme Court and cited herein are typical

of the kinds of prosecutions which may be impinged.)

POINT XI

THE COURT OF APPEAL HAS NO JURISDICTION TO REVIEW THE SUFFICIENCY OF EVIDENCE OF THE TRIAL DE NOVO JUDGMENT. HOWEVER, THERE WAS SUFFICIENT EVIDENCE PRESENT AT TRIAL TO SUSTAIN THE CIRCUIT COURT JUDGMENT

Appellee will not spend much space addressing Defendant/Appellant's argument that there was insufficient evidence presented at the trial de novo to sustain the judgment of the Circuit Court. Appellee has already emphasized its contention that this Court lacks jurisdiction to hear the appeal in this case. Such argument obviously applies to a review of the sufficiency of the evidence below, since there is no statutory basis for such review and since it is clear from the statutes cited in Point I hereinabove that the legislature intended that the Circuit Court be the final Court of appeal from the Small Claims Court on all issues other than where a statute or ordinance is declared unconstitutional.

As was stated in State v. Matus, 789 P.2d 304 (Utah App. 1990) in the instance of an appeal in a criminal case:

> . . . once a justice court judgment is appealed to circuit court, Article I, Section 12 and Article VIII, Section 5 of the State Constitution do not entitle a disgruntled party to plenary review on the record of the circuit court's judgment in the do novo proceeding.

Matus, supra, at p. 305. See also City of Monticello v. Christensen, 788 P.2d 513 (Utah 1990).

In any event, a review of the trial de novo transcript reveals that the required elements of the plaintiff's complaint were established by competent evidence; that is, that the vehicle in question was parked in violation of the City's ordinances and that Defendant/Appellant Leahy was the registered owner of that vehicle at the time of violation. Trial transcript, pages 5, 6.

Defendant/Appellant Leahy failed to present any evidence contradicting the City's evidence and did not present evidence that he was not the person who had parked the vehicle. Therefore, viewing Section 12.56.530 as imposing either a common law or a statutory presumption that Leahy was the person who parked the vehicle, or viewing that ordinance as imposing strict and vicarious liability upon Leahy, there was sufficient evidence presented for the Court to find Leahy liable to the City. Likewise, the same evidence was sufficient under the overt strict liability ordinance, Section 12.56.560, to sustain the trial Court's judgment.

CONCLUSION

This Court has no jurisdiction over the appeal in this instance, since (1) Appellant has not given notice of these proceedings to the Attorney General, (2) Appellant raises his challenge of the State statute for the first time on this appeal, and because (3) no State statute or local ordinance has been found to be unconstitutional as required by Section 78-6-10, Utah

Code Annotated 1953 as amended. Appellant's challenge to the constitutionality of the said State statute and to Salt Lake City Ordinances 12.56.530 and 12.56.560 must fail since Appellant has failed to meet his burden to show, beyond a reasonable doubt, that said statute and ordinances are violative of any constitutional right to which Appellant is entitled. The challenged statute and ordinances are entitled to a presumption of constitutionality. They meet the constitutional requirements of due process, open access to the Courts, and equal protection of the laws. This Court should uphold the said statute and ordinances as being constitutional, and should find Appellant's appeal to be without basis.

RESPECTFULLY submitted this 5TH day of NOVEMBER, 1992.

LARRY V. SPENDLOVE
Assistant City Attorney
Attorney for Appellee

CERTIFICATE OF MAILING

I hereby certify that I mailed four copies of the foregoing to the following, postage paid, this 5TH day of NOVEMBER, 1992:

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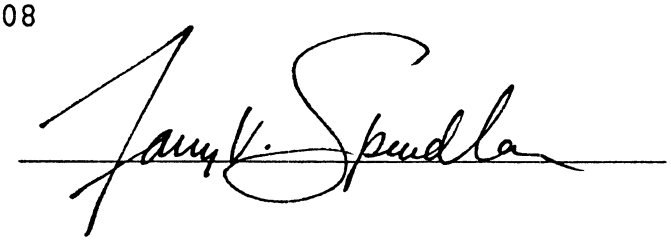

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